

**House File 2204 - Introduced**

HOUSE FILE 2204

BY BYRNES

**A BILL FOR**

1 An Act authorizing performance-based efficiency contracts for  
2 governmental units.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 297A.1 Legislative intent.

2 The general assembly finds that investment in energy  
3 conservation measures by public facilities can reduce  
4 the amount of energy and other resources consumed by the  
5 facilities; reduce ongoing operational costs; improve comfort,  
6 reliability, and the indoor environment for employees and  
7 citizens; produce a positive environmental impact; enhance  
8 revenues generated by governmental units; and create local  
9 jobs, producing both immediate and long-term cost savings and  
10 other benefits. It is the policy of this state to encourage  
11 state agencies, departments, and divisions; public health  
12 facilities; public universities and community colleges,  
13 school districts, and area education agencies; and counties,  
14 municipalities, and other political subdivisions to implement  
15 energy conservation and facility improvement measures that  
16 reduce energy, water, wastewater, or any other utility or  
17 operating costs, and, when economically feasible, build,  
18 operate, maintain, or renovate public facilities and systems  
19 in a manner that will minimize operational costs and maximize  
20 utility savings and other efficiencies. It is additionally the  
21 policy of this state to encourage reinvestment of the savings  
22 and revenues resulting from energy conservation measures into  
23 additional and continued energy conservation efforts through  
24 performance-based efficiency contracts and other measures  
25 deemed appropriate by a governmental unit.

26 Sec. 2. NEW SECTION. 297A.2 Definitions.

27 As used in this chapter, unless the context otherwise  
28 requires:

29 1. *“Energy conservation measure”* or *“facility improvement*  
30 *measure”* means a program, facility alteration, equipment  
31 installation, remodeling of a new or existing building, or  
32 technology upgrade, which is designed to reduce energy, water,  
33 wastewater, or other utility or operating costs, or enhance  
34 billable revenue, including but not limited to the following:

35 a. Employee training and occupant behavior modification

- 1 programs.
- 2 *b.* Insulation of building structures and systems within  
3 buildings.
- 4 *c.* Windows and window systems, roofs and roofing materials,  
5 caulking or weather stripping, installation or modification of  
6 doors, heat-absorbing or heat-reflecting applications, or other  
7 modifications to windows, doors, or the building envelope, that  
8 reduce energy and operating costs.
- 9 *d.* Automated or computerized energy or facility control  
10 systems.
- 11 *e.* Heating, ventilation, and air-conditioning systems,  
12 including specialty systems serving food service, laboratory,  
13 and other applications.
- 14 *f.* Lighting systems and fixtures, including daylighting  
15 systems.
- 16 *g.* Energy recovery systems.
- 17 *h.* Systems that produce steam or forms of energy such as  
18 heat in addition to electricity.
- 19 *i.* Renewable energy systems or other distributed power  
20 generation systems.
- 21 *j.* Water and wastewater fixtures, appliances, and equipment.
- 22 *k.* Improvements to water distribution, sewer, and wastewater  
23 treatment facilities.
- 24 *l.* Landscaping measures that reduce watering demands and  
25 capture and hold applied water and rainfall.
- 26 *m.* Metering or related equipment or systems that improve the  
27 accuracy or efficiency of billable revenue-generating systems.
- 28 *n.* Automated, electronic, or remotely controlled  
29 technologies, systems, or measures that reduce operating costs.
- 30 *o.* Installation and modification of software-based systems  
31 that reduce facility management or other facility operating  
32 costs.
- 33 *p.* Programs to reduce energy costs through rate adjustments,  
34 load shifting to reduce peak demand, or use of alternative  
35 energy suppliers, including but not limited to demand response

1 programs, changes to more favorable rate schedules, negotiation  
2 of lower rates or new suppliers, or auditing of utility billing  
3 and metering.

4 *q.* Energy information and control systems that monitor  
5 consumption, redirect systems to optimal energy sources, and  
6 manage energy-using equipment.

7 *r.* Any measure not otherwise described in this chapter that  
8 is designed to produce utility consumption or operational cost  
9 savings, revenue enhancements, or similar efficiency gains to a  
10 governmental unit.

11 2. "*Governmental unit*" means any authority, board, bureau,  
12 commission, department, agency, or institution of a government  
13 agency, including but not limited to any state agency, or any  
14 county, city, district, municipal corporation, municipality,  
15 municipal authority, political subdivision, school district,  
16 educational institution, incorporated town, township, other  
17 incorporated district, or other public instrumentality  
18 which has the authority to contract for the construction,  
19 reconstruction, alteration, or repair of any public building or  
20 other public work or public improvement.

21 3. "*Performance-based efficiency contract*" means a contract  
22 between a governmental unit and a qualified provider for  
23 the evaluation and recommendation of energy conservation or  
24 facility improvement measures and for implementation of one or  
25 more such measures.

26 4. "*Qualified provider*" means a person with a record of  
27 documented performance-based efficiency contract projects who  
28 is experienced in the design, implementation, and installation  
29 of energy conservation or facility-improvement measures; and  
30 has the technical capabilities to verify that such measures  
31 generate energy and operational cost savings or enhanced  
32 revenues. A "*qualified provider*" provides a governmental unit  
33 with the following information and services in connection with  
34 a performance-based efficiency contract:

35 *a.* Project design and specifications.

1     *b.* Construction and construction management.

2     *c.* Commissioning.

3     *d.* Ongoing services as required.

4     *e.* Measurement, verification, and guarantee of savings from  
5 energy conservation or facility-improvement measures.

6     Sec. 3. NEW SECTION. **297A.3 Selection of qualified provider**  
7 **— award of performance-based contract — contracting procedures**  
8 **and provisions — funding.**

9     1. A governmental unit may enter into a performance-based  
10 efficiency contract with a qualified provider in accordance  
11 with the provisions of this chapter. If, in accordance with  
12 applicable law, the award of a contract by a governmental  
13 unit requires action at a public meeting, a governmental  
14 unit may award a performance-based efficiency contract at  
15 a public meeting if it has provided public notice in the  
16 manner prescribed under chapter 21, and the notice shall  
17 include the names of the parties to the proposed contract  
18 and the purpose of the contract. For governmental units  
19 that are not required to take actions on contracts at public  
20 meetings, the governmental unit may award a performance-based  
21 efficiency contract in accordance with the procedures  
22 adopted by the governmental unit and the requirements of all  
23 applicable laws. However, notwithstanding the provisions of  
24 chapter 8A, subchapter III, chapter 26, or other provisions  
25 of law relating to the awarding of public contracts, this  
26 chapter shall constitute the sole authority necessary for a  
27 governmental unit to select a qualified provider and enter into  
28 a performance-based efficiency contract.

29     2. A governmental unit may select a qualified provider  
30 that best meets the needs of the governmental unit in  
31 accordance with criteria established by the governmental  
32 unit. After reviewing the qualifications of one or more  
33 qualified providers, a governmental unit may enter into a  
34 performance-based efficiency contract with a qualified provider  
35 if it finds that the amount the governmental unit would spend

1 on the energy conservation and facility-improvement measures  
2 recommended in the proposal would not exceed the amount of  
3 energy and operational cost savings or revenue enhancements  
4 derived from the measures within a twenty-year period from the  
5 date of installation.

6 3. A qualified provider to whom a performance-based  
7 efficiency contract is awarded shall provide a one hundred  
8 percent performance bond to the governmental unit to assure the  
9 provider's faithful and complete performance of the contract.

10 4. *a.* A performance-based efficiency contract shall  
11 include a written guarantee by the qualified provider that  
12 the savings and efficiency gains, in the aggregate, will meet  
13 or exceed the cost of the energy conservation or facility  
14 improvement measures to be implemented under the contract.  
15 The qualified provider shall be responsible, pursuant to the  
16 performance-based efficiency contract, for measuring and  
17 verifying the guaranteed savings and efficiency gains provided  
18 by the implemented measures by using one of the measurement  
19 and verification methodologies set forth in the international  
20 performance measurement and verification protocol. If, due to  
21 existing data limitations or the nonconformance of specific  
22 project characteristics, none of the methods listed in the  
23 international performance measurement and verification protocol  
24 is sufficient for measuring guaranteed savings and efficiency  
25 gains, the qualified provider shall develop and document an  
26 alternate method that is compatible with the protocol.

27 *b.* The performance-based efficiency contract shall  
28 provide for reimbursement by the qualified provider to the  
29 governmental unit for any shortfall of guaranteed savings  
30 and efficiency gains. Savings and efficiency gains shall be  
31 measured, verified, and documented by the qualified provider,  
32 at a minimum, during each of the first three years following  
33 completion of installation of the improvement measures, after  
34 which time the governmental unit may elect, at its discretion,  
35 to discontinue the measurement, verification, and documentation

1 services and associated guarantee.

2 5. An improvement that is not causally connected  
3 to an energy conservation measure may be included in a  
4 performance-based efficiency contract if the value of the  
5 improvement does not exceed fifteen percent of the total value  
6 of the performance-based efficiency contract, and either the  
7 improvement is necessary to conform to a federal, state, or  
8 local law, rule, or ordinance, or an analysis within the  
9 performance-based efficiency contract demonstrates that there  
10 is an economic advantage to the governmental unit implementing  
11 the improvement as part of the performance-based efficiency  
12 contract.

13 6. A facility alteration which includes expenditures that  
14 are required to properly implement other energy conservation  
15 measures may be included as part of a performance-based  
16 efficiency contract. In such a case, notwithstanding any other  
17 provision of law, the installation of these additional measures  
18 may be supervised by the qualified provider.

19 7. A governmental unit may enter into a third-party  
20 installment payment or lease-purchase agreement to finance  
21 the costs associated with the performance-based efficiency  
22 contract. The installment payment or lease-purchase agreement  
23 may provide for payments over a period of time not to exceed  
24 twenty years commencing on the completion of installation  
25 of the energy conservation measures. Notwithstanding any  
26 other provision of law to the contrary, a governmental unit  
27 may use funds designated for operating, utility, or capital  
28 expenditures to fund any performance-based efficiency contract,  
29 including, without limitation, funding any installment payment  
30 or lease-purchase agreement. Payments under an installment  
31 payment or lease-purchase agreement for energy conservation  
32 measures shall not constitute indebtedness of the governmental  
33 unit within the meaning of a constitutional or statutory debt  
34 limitation, nor shall such payments constitute a tax-supported  
35 obligation.

1 8. Any amount of the performance-based efficiency contract  
2 or installment payment or lease-purchase agreements costs that  
3 is guaranteed by the qualified provider shall be excluded from  
4 any limits or requirements imposed by sections 297.36, 331.402,  
5 and 384.24A.

6 EXPLANATION

7 This bill authorizes governmental units to enter into  
8 performance-based energy contracts.

9 The bill provides legislative intent detailing the benefits  
10 of investment in energy conservation measures and identifying  
11 a state policy of encouraging governmental units to implement  
12 energy conservation and facility improvement measures that  
13 reduce utility or operating costs and maximize utility savings  
14 and other efficiencies, and to reinvest resulting savings and  
15 revenues into additional and continued energy conservation  
16 efforts through performance-based efficiency contracts and  
17 other appropriate measures.

18 The bill provides several definitions. The bill defines  
19 an "energy conservation measure" or "facility improvement  
20 measure" to mean a program, facility alteration, equipment  
21 installation, remodeling of a new or existing building, or  
22 technology upgrade, which is designed to reduce energy, water,  
23 wastewater, or other utility or operating costs, or enhance  
24 billable revenue. The bill provides a nonexclusive listing  
25 of specified actions or measures encompassed within the  
26 definition. The bill defines a "governmental unit" to mean any  
27 authority, board, bureau, commission, department, agency, or  
28 institution of a government agency, including but not limited  
29 to any state agency, or any county, city, district, municipal  
30 corporation, municipality, municipal authority, political  
31 subdivision, school district, educational institution,  
32 incorporated town, township, other incorporated district,  
33 or other public instrumentality which has the authority to  
34 contract for the construction, reconstruction, alteration, or  
35 repair of any public building or other public work or public

1 improvement. The bill defines a "performance-based efficiency  
2 contract" to mean a contract between a governmental unit and  
3 a qualified provider for the evaluation and recommendation of  
4 energy conservation or facility improvement measures and for  
5 implementation of one or more such measures. The bill defines  
6 a "qualified provider" to mean a person with a record of  
7 documented performance-based efficiency contract projects who  
8 is experienced in the design, implementation, and installation  
9 of energy conservation or facility improvement measures; and  
10 has the technical capabilities to verify that such measures  
11 generate energy and operational cost savings or enhanced  
12 revenues.

13 The bill provides that if awarding a contract by a particular  
14 governmental unit requires action at a public meeting, a  
15 governmental unit may award a performance-based efficiency  
16 contract at such a meeting, if it has provided public notice  
17 in the manner prescribed under applicable law relating to open  
18 meetings, and the notice shall include the names of the parties  
19 to the proposed contract and the purpose of the contract.  
20 For governmental units that are not required to take actions  
21 on contracts at public meetings, the bill provides that the  
22 governmental unit may award a performance-based efficiency  
23 contract in accordance with the procedures adopted by the  
24 governmental unit and the requirements of all applicable  
25 laws. The bill states that, notwithstanding provisions in  
26 chapter 8A or 26, or other provisions relating to the awarding  
27 of public contracts, new Code chapter 297A contained in the  
28 bill shall constitute the sole authority necessary for a  
29 governmental unit to select a qualified provider and enter into  
30 a performance-based efficiency contract.

31 The bill provides that after reviewing the qualifications  
32 of one or more qualified providers, a governmental unit may  
33 enter into a performance-based efficiency contract with a  
34 qualified provider if it finds that the amount it would spend  
35 on the energy conservation and facility improvement measures

1 recommended in the proposal would not exceed the amount of  
2 energy and operational cost savings or revenue enhancements  
3 derived from the measures within a 20-year period from the date  
4 of installation. A qualified provider to whom a contract is  
5 awarded shall be required to provide a 100 percent performance  
6 bond to the governmental unit to assure the provider's faithful  
7 and complete performance of the contract. The bill provides  
8 that a contract shall include a written guarantee by the  
9 qualified provider that the savings and efficiency gains, in  
10 the aggregate, will meet or exceed the cost of the energy  
11 conservation or facility improvement measures to be installed  
12 under the contract. The bill specifies that the qualified  
13 provider shall be responsible, pursuant to the contract, for  
14 measuring and verifying the guaranteed savings and efficiency  
15 gains provided by the installed measures by using one of  
16 the measurement and verification methodologies set forth in  
17 the international performance measurement and verification  
18 protocol. The bill provides that the contract shall provide  
19 for reimbursement by the qualified provider for any shortfall  
20 of guaranteed savings and efficiency gains, and that such  
21 savings and gains shall be measured, verified, and documented  
22 by the qualified provider, at a minimum, during each of the  
23 first three years following completion of installation of the  
24 improvement measures.

25 The bill states that an improvement that is not causally  
26 connected to an energy conservation measure may be included in  
27 a performance-based efficiency contract if the total value of  
28 the improvement does not exceed 15 percent of the total value  
29 of the contract, and either the improvement is necessary to  
30 conform to a federal, state, or local law, rule or ordinance,  
31 or an analysis within the performance-based efficiency contract  
32 demonstrates that there is an economic advantage to the  
33 governmental unit implementing the improvement as part of the  
34 contract.

35 The bill specifies that a facility alteration which includes

1 expenditures that are required to properly implement other  
2 energy conservation measures may be included as part of  
3 a performance-based efficiency contract. In such a case,  
4 notwithstanding any other provision of law, the bill provides  
5 that the installation of these additional measures may be  
6 supervised by the qualified provider.

7 The bill authorizes a governmental unit to enter into a  
8 third-party installment payment or lease-purchase agreement  
9 to finance the costs associated with the performance-based  
10 efficiency contract. The bill states that a governmental unit  
11 may use funds designated for operating, utility, or capital  
12 expenditures to fund any performance-based efficiency contract,  
13 including, without limitation, any installment payment or  
14 lease-purchase agreement, and that payments under such an  
15 agreement shall not constitute indebtedness of the governmental  
16 unit within the meaning of a constitutional or statutory debt  
17 limitation, nor shall such payments constitute a tax-supported  
18 obligation.

19 The bill provides that any amount of the contract or  
20 agreement costs that is guaranteed by the qualified provider  
21 shall be excluded from any limits or requirements imposed by  
22 Code section 384.24A dealing with loan agreements entered into  
23 by cities, Code section 331.402 dealing with county powers  
24 relating to finances, and Code section 297.36 dealing with  
25 school district loan agreements.